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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,843	12/12/2003	Russell Evan Thorson	19,519	1966

23556 7590 03/21/2006

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/734,843	Applicant(s) THORSON ET AL.	
	Examiner Sue A. Purvis	Art Unit 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213:

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/3/06, 8/1/05</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet.</u> |

Continuation of Attachment(s) 6). Other: IDS dated 5/23/05, 2/14/05, 1/7/05, 10/21/04, 9/24/04, 8/9/04.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In step (e) of claim 1, applicant states "folding said panel without said elastic band over both said other panel and said elastic band so that said distal end of said panel without said elastic band is aligned approximately even with said outer end of said elastic band." First, it is unclear which panel the applicant is referring to, since a first and a second panel were introduced in the claim, furthermore, both panels have elastic bands on them, so it is unclear how this process step can take place.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitation "said panel" in lines 14 and 15 and "said other panel" in line 14. There is insufficient antecedent basis for this limitation in the claim. A "first panel"

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and "second panel" are defined in the claims, so it is unclear which panel applicant is referring to.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-13 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo et al. (EP 1 240 881 A2) in view of Glaug et al (US Patent No. 6,358,350 B1).

Otsubo discloses a process for continuously making a pants-type diaper including:

(1) forming front and back panels by cutting web (61) in the machine direction along line c;
(2) attaching elastic bands (62, 63) to both of the front and back panels at the distal end;
(3) securing an absorbent assembly (84) to the front and back panels; (4) folding one of the panels over the other panel; and (5) bonding the side edges together to form an absorbent article with a waist opening and a pair of leg openings. (See Figure 2.) Otsubo does not disclose the elastic bands being cantilevered outward from the distal end of the panel, as per claims 10 and 16. Glaug discloses an embodiment in Figure 6 where the elastic strips (97, 112) are glued to the edge of the web (98) and as a result extend outward from the distal end. It would have been obvious to one having ordinary skill in the art at the time the invention was made that an alternative to the bands used in Otsubo, are the bands used in Glaug, where the elastic extends over the edge of the web and is used as a waistband.

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As to claims 11, 12, and 17, Glaug teaches the elastic used in one embodiment has a width of 7.9 mm, however, this embodiment discussed is the embodiment in Figure 2 with the sleeve member encasing the elastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a width of the elastic within the claimed ranges, because there is an appreciation in Glaug that the elastic width is important because it deals with the fit of the resulting garment. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

As to claim 13, one of ordinary skill in the art would appreciate that an elastic has greater retraction than the web material (61) in Otsubo in view of Glaug.

As to claim 18, a retracted length of the bands being at least 2% less than the panel is within the purview of artisan, because, elastics are known to have less length than the material the elastic is being bonded to.

8. Claims 14, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo in view of Glaug as applied to claims 10 and 16 above, and further in view of Thorson et al. (US Patent No. 6,979,380 B2).

Otsubo in view of Glaug does not disclose stretch the front and back panels as per claims 14 and 15. Thorson teaches the elongation of the body panel material is between about 20% and about 400% which effects the final size or pitch of the undergarment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to stretch the panels of Otsubo in view of Glaug based on the teachings of Thorson.


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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sue A. Purvis
Primary Examiner
Art Unit 1734

SP
March 15, 2006